

NOT INCLUDED IN
BOUND VOLUMES

HGB
Maitland, FL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONTEMPORARY CARS, INC.
d/b/a MERCEDES-BENZ OF ORLANDO
and AUTONATION, INC.,
SINGLE AND JOINT EMPLOYERS

and

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Cases 12-CA-026126
12-CA-026233
12-CA-026306
12-CA-026354
12-CA-026386
12-CA-026552

ORDER DENYING
MOTION FOR RECONSIDERATION

On September 28, 2012, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ The Board, among other things, affirmed the judge's findings that the Respondents unlawfully failed to bargain over a number of postelection unilateral changes, implicitly rejecting the Respondents' arguments that they were not obligated to bargain with the Union before August 23, 2010 and that compelling economic circumstances excused the Respondents' failure to bargain over the layoffs of four service technicians.

On October 17, 2012, the Respondents filed a Motion for Reconsideration of the Board's Decision and Order.

¹ 358 NLRB No. 163.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In their motion, the Respondents reiterate their assertion that the Board's August 23, 2010 decision in *Mercedes-Benz of Orlando*, 355 NLRB 592 (2010), enfd. 667 F.3d 1364 (11th Cir. 2012), implicitly recognized that Respondent Mercedes-Benz of Orlando (MBO) was operating under a prospective duty to bargain with the Union only from the date of that decision.² The Respondents' argument is without merit. In *Mercedes-Benz of Orlando*, the properly constituted Board considered the pre-election representation issues raised by Respondent MBO and affirmed the two-member Board's decision to deny MBO's Request for Review in the representation proceeding. 355 NLRB 592, 592. The Board found that the timing of the December 16, 2008 representation election was not affected by the two-member Board's decision on the request for review, and that the decision of the Regional Director to open and count the ballots was, at worst, harmless error that did not affect the tally of ballots. *Id.* at 592-593. The Respondents point to footnote 4, in which the Board stated "[t]o the extent that the date of the Certification of Representative may be significant in future proceedings, we will deem the Certification of Representative to have been issued as of the date of this decision." *Id.* at 592 fn. 4. As emphasized by the judge, if the Board had intended its decision to signify that there was no bargaining obligation prior to August 23, 2010, it would have expressly done so, rather than stating that August 23, 2010 would be the certification date for purposes of future proceedings. Further, as noted by the judge, an employer's "obligation to bargain before making

² The August 28, 2009 decision in *Mercedes-Benz of Orlando*, 354 NLRB No. 72 (2009), by the two-member Board, finding that Respondent MBO violated Sec. 8(a)(5) by refusing to bargain with the Union was invalid under *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010).

changes commences not on the date of certification, but on the date of the election.” *Ramada Plaza Hotel*, 341 NLRB 310, 316 (2004), citing *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974).³

The Respondents also repeat their arguments that the layoffs were necessitated by compelling economic circumstances, and that the judge erroneously recommended a reinstatement remedy for these layoffs. For the reasons stated by the judge, we find that the Respondents’ assertions are without merit.

Having duly considered the matter, we find that the Respondents' motion fails to present “extraordinary circumstances” warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.⁴

IT IS ORDERED that the Motion for Reconsideration is denied.

Dated, Washington, D.C., December 7, 2012.

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ As noted in the underlying decision, although Member Hayes expresses no view as to whether *Mike O'Connor Chevrolet* was correctly decided, he agrees to apply it here for institutional reasons.

⁴ The Respondents also argue that the President's recess appointments of Members Block and Griffin to the Board were not properly constituted. For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument.